

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 90947-001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
This 9th day of September 2008
by Ken Ross
Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On July 14, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on July 21, 2008.

Because it involved medical issues, the Commissioner assigned the case to an independent review organization (IRO) which provided its analysis and recommendations to the Commissioner on August 4, 2008.

II

FACTUAL BACKGROUND

The Petitioner receives health care benefits from Blue Cross Blue Shield of Michigan (BCBSM) under its *Blue Choice Managed Health Care Group Benefits Certificate* (the certificate). On September 13, 2007, the Petitioner underwent artificial intervertebral disk replacement surgery at the XXXXX in XXXXX. The Petitioner was in the hospital from September 13, 2007 until

September 24, 2007. The facility charges in question were \$32,354.20. The professional charges for this surgery (amount not included in the records submitted by the parties) were paid in error by BCBSM but the facility charges were denied.

The Petitioner appealed the denial through BCBSM's internal grievance process. After a managerial-level conference on May 15, 2008, BCBSM did not change its decision and issued a final adverse determination on May 19, 2008.

III ISSUE

Did BCBSM properly deny coverage for the Petitioner's artificial intervertebral disc replacement surgery?

IV ANALYSIS

Petitioner's Argument

The Petitioner has had problems with her back for most of her life. She managed to do well with over the counter medication until approximately five years ago. The pain in her back became so severe that she couldn't sit through a movie, ride in a car for any distance, or take her dog for a walk. She saw a chiropractor, a physical medicine specialist and an orthopedic specialist but none of this care helped her situation. Injections at a pain clinic also offered very little relief.

The Petitioner's family doctor researched the surgical options available for the Petitioner and determined that disk replacement was the best treatment. The doctor believed that the best place to have this done was in XXXXX. The Petitioner traveled to XXXXX and had disk replacement surgery on September 13, 2007. This care was successful in relieving her symptoms.

The Petitioner argues that the surgeons in XXXXX were best able to treat her. She believes that BCBSM is required to reimburse her for the cost of her surgery.

BCBSM's Argument

Under the terms of the certificate of coverage, BCBSM does not pay for experimental

treatment or services related to experimental treatment. BCBSM's medical director reviewed the documentation and concluded that the surgery was experimental/investigational since it has not been scientifically demonstrated to be as safe and effective as conventional treatment.

Commissioner's Review

The Petitioner's certificate sets forth the benefits that are covered. In *Section 9: General Conditions of Your Contract* (page 9.3) the certificate of coverage states:

We do not pay for experimental treatment (including experimental drugs or devices) or services related to experimental treatment. . . .

Experimental treatment is defined in the certificate (page 10.8) as:

[t]reatment that has not been scientifically proven to be as safe and effective for treatment of the patient's conditions as conventional treatment.

The question of whether the Petitioner's proposed artificial intervertebral disk surgery is experimental in nature was presented to an IRO for analysis as required by section 11(6) of the Patient's Right to Independent Review Act. The IRO reviewer is a physician in active practice certified by the American Board of Orthopedics. The reviewer is a Member of the American Academy of Orthopedic Surgeons, the American Medical Association, and the Eastern Orthopedic Association and is in active practice.

The IRO reviewer concluded that based on a review of the peer reviewed literature and BCBSM's definition of experimental, the maverick disk replacement to date has not been proven to produce any greater benefit than the standard treatment of fusion; therefore it is considered experimental.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation," MCL 550.1911(16) (b). The IRO reviewer's analysis is based on extensive

expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner accepts the conclusion of the IRO and finds that the Petitioner's artificial disc replacement surgery is experimental/investigational for treatment of her condition and therefore is not a covered benefit under the certificate.

V ORDER

Respondent BCBSM's May 19, 2008, final adverse determination is upheld. BCBSM is not required to cover the Petitioner's artificial disc replacement including the related hospital care.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.